

## REMARKS

Claims 1 - 4, 6 - 10, 12 - 16 and 18 - 21 are in the application. Claims 1, 9, 15, and 19 - 21 are currently amended; claims 5, 11, and 17 have been canceled; claims 6, 8, and 10 were previously presented; and claims 2 – 4, 7, 13, 14, 16, and 18 remain unchanged from the original versions thereof. Claims 1, 9, 15, and 19 – 21 are the independent claims herein.

Claims 1, 9, 15, and 19 – 21 are currently amended to clarify that the claimed reciprocity rule is identified based on a classification group the participant, at least one participant, and plurality of participants belong to and the reciprocity rule prevents the participant from replying to a message from the originator. Support for the current claim amendments may be found in the specification at paragraphs [0037] – [0038]. Thus, no new matter has been added to the application as a result of the amendments submitted herewith.

Reconsideration and further examination are respectfully requested.

### **Claim Rejections – 35 USC § 101**

Claim 19 was rejected for allegedly being directed to non-statutory subject matter under 35 USC 101.

In an effort to advance prosecution of the present application and not as an indication of any agreement with the rejection based on the merits thereof, the specification is amended to differentiate between hardware and software mediums and claimed 19 is currently amended, all as suggested by the Examiner. Claim 19 is now directed toward a hardware medium.

Therefore, Applicant respectfully submits that claim 19 is directed to statutory subject matter. Applicant requests the reconsideration and withdrawal of the rejection of claim 19 under 35 USC 101.

**Claim Rejections – 35 USC § 103(a)**

Claims 1 - 21 were rejected as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of what is well known in the art. This rejection is respectfully traversed.

The Office Action admits that the supposed AAPA does not explicitly state the originator established the reciprocity rule, governing an ability of the participant to send a message to the originator wherein the reciprocity rule prevents the participant from sending a response message to the originator. For such disclosure the Office Action takes Official Notice by stating that "permitting and blocking recipients in responding to the originator in an instant message environment was well known in the art the time the invention was made.

The Office Action further states, in the *Response to Amendment* section (See Final Office Action, pp. 6 – 7) that Applicant failed to provide a proper "seasonable challenge" to the prior assertion of Official Notice and that the Official Notice would be considered admitted prior art.

However, Applicant respectfully submits that the Examiner has improperly taken Official Notice of the claim elements by only stating that which is admittedly not disclosed by the alleged AAPA is well known, without further support or evidence.

M.P.E.P. §2144.03(A) states that "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. In re Zurko, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Applicant respectfully traverses this official notice. Specifically, M.P.E.P. §2144.03(A) states that "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of, instant and unquestionable demonstration as being well-known." In the present case, Applicant respectfully asserts that at the time the invention was made, it was not common

knowledge in the art of computer network communication "establishing, by said originator and based on said classification group, a reciprocity rule for said communication session governing an ability of said participant to reply a message from said originator; and conducting said communication session involving said originator and said participant based on said reciprocity rule, wherein said reciprocity rule prevents said participant from sending a response message in reply to a message from said originator" (See e.g., claim 1)

Furthermore, the Examiner's cited reference to Davies fails to disclose or even suggest that for which it is cited and relied upon for allegedly disclosing. In particular, the Examiner states that Davies clearly discloses the sender has the ability to permit or prevent recipients from responding as well as the sending being able to modify the (reciprocity) rules during a communication when necessary. In fact, Davies merely discloses, "Users are also able to control who contacts them and to hide their presence on the internet when this is required. Information about ICQ is given on the Internet at <http://www.icq.com>." (See Davies, col. 2, ln. 42 – 45) Thus, it is clear that Davies does not disclose, reference, or even make a distinction between an originator and a participant, disclose or suggest any governing rule regarding "responding" to a message from an originator, or any disclosure or suggestion of modifying a rule during a communication or otherwise. That is, Davies fails to disclose or suggest that for which it was cited and relied upon for disclosing.

Thus, Applicant respectfully submits the Examiner has improperly taken Official Notice. Further, and even if the Official Notice is deemed proper by also citing Davies, Applicant has clearly shown that Davies fails to disclose those aspects of the claims that have been admitted as not being disclosed by AAPA by the Examiner.

Claim 1 also recites that the response from the participant is in reply to a message from the originator. This aspect of the claims has been clarified by current amendments to claims 1, 15, and 19 – 21. This claimed aspect is not seen as being disclosed by the cited and relied upon references.

Applicant also submits that claims 9, 15, and 19 – 21 are worded similar to claim 1. Thus, the alleged AAPA and Davies do not disclose the particular reciprocity rules disclosed therein.

Therefore, it is clear that the alleged AAPA and Davies do not disclose or suggest that which is claimed in claims 1, 9, 15, and 19 – 21. Claims 2 - 4, 6 - 8, 10, 12 - 14, 16, and 18 depend from claims 1, 9, 15. Accordingly, Applicant submits that all of claims 1 - 4, 6 - 10, 12 - 16, and 18 - 21 are allowable.

## C O N C L U S I O N

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,



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Date

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